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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77534661
Applicant	Natural Balance Pet Foods, Inc.
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Date	07/22/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:) TRADEMARK LAW OFFICE 102
)
Natural Balance Pet Foods, Inc.) Trademark Attorney:
) Cimmerian Coleman
)
Serial No. 77/534,661) (571) 272-9146
)
Filed: 07/30/2008)
)
Mark: KNOW THAT YOUR PET FOOD)
HAS BEEN TESTED.)

BRIEF FOR APPELLANT

I.

INTRODUCTION

Applicant and Appellant Natural Balance Pet Foods, Inc. (hereafter "Appellant") hereby appeals from the Examiner's refusal to register the above-referenced mark dated December 1, 2009. Appellant filed a Notice of Appeal and paid the required fee on May 27, 2010. Therefore, the Notice of Appeal was timely filed. This brief is being filed electronically with the Trademark Trial and Appeal Board on July 22, 2010. In the event that any filing fee is required for the filing of this Brief for Appellant, the Commissioner for Trademarks is hereby authorized to charge my Deposit Account No. 18-2222 for any such filing fee.

II.

APPELLANT'S MARK

Appellant seeks registration on the Principal Trademark Register of its mark

1
2 "KNOW THAT YOUR PET FOOD HAS BEEN TESTED" for use in conjunction with dog
3 food and cat food.

4
5 **III.**

6 **REJECTION BY TRADEMARK ATTORNEY**

7 The Trademark Attorney has not cited any other application or registration as a bar
8 to registration but has rejected the specimen of use that was filed with the application. The
9 Appellant submitted a photograph of a product display adjacent the goods sold at retail
10 wherein the trademark was clearly visible on the display. The Examiner has rejected the
11 specimen of use because the Examiner claims that the applied for mark as shown on the
12 specimen is merely informational matter because the specimen indicates that one can log
13 onto a website to determine whether the pet food has been tested. The Appellant very
14 respectfully disagrees with the Examiner for the reasons as set forth below.
15

16 **IV.**

17 **ARGUMENT AND SUPPORTING CASE LAW**

18 The Trademark Attorney has refused registration because the Trademark Attorney
19 believes that the specimen of use submitted by the Appellant does not show use as a
20 trademark. Enclosed with this brief is a photograph of the specimen of use as submitted
21 which is a product display positioned next to Appellant's goods. Clearly marked on the
22 display is the trademark "KNOW THAT YOUR PET FOOD HAS BEEN TESTED"
23 Therefore, there is absolutely and totally no question that the product display contains the
24 trademark thereon and designates it as a trademark and therefore since printing the
25 trademark on the product displays is appropriate trademark use, it is respectfully submitted
26 that the Examiner's rejection should be reversed.
27
28

1
2 Trademark specimens as evidence of acceptable trademark use of the mark includes
3 "in general, labels, tags or containers bearing the mark or displays associated with the goods
4 which bear the mark are appropriate specimens." 37 C.F.R. §2.56; TMEP §904.03(a).
5 Accordingly, since the specimen of use is a product display positioned adjacent to the
6 products as sold and clearly has the trademark thereon, it is respectfully submitted that the
7 specimen of use submitted by the Appellant is acceptable and therefore, the Trademark Trial
8 and Appeal Board is respectfully requested to reverse the Examiner and to permit the
9 present application to pass to issuance and registration.
10

11
12 V.

13 CONCLUSION

14
15 Based on the foregoing reasons and arguments the present application for "KNOW
16 THAT YOUR PET FOOD HAS BEEN TESTED." should be passed to publication in the
17 official Trademark Gazette and reversal of the Trademark Attorney and issuance of a notice
18 of publication is respectfully solicited.
19

20 Respectfully submitted,

21 ROZSA LAW GROUP LC

22
23 Date: July 22, 2010

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Know that your pet food has been tested.

Log onto www.naturalbalance.net
then check your products in 3 easy steps!

- Click on the "Buy With Confidence" banner
- Type in the "Best By" Date on your pet food bag or can
- Read the actual Testing Result!

Natural Balance Pet Foods

As of December 31st, 2003, Natural Balance Pet Foods has been awarded the "Best of Breed" award by the International Pet Food Industry Association (IPFIA) for its commitment to quality and safety. This award is a testament to the company's dedication to providing the highest quality pet food products to its customers.

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